

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

KeywordsV. Bona Fide PurchaserA. Introduction

The bona fide purchaser amendment was added to the MLA, 30 U.S.C. 184(h)(2) to 184(i), to protect bona fide purchasers of Federal oil and gas leases who acquired holdings in good faith from the possible consequences of violations of the law by their predecessors in title, e.g., predecessors that obtained leases in violation of the acreage limitation provisions. The bona fide purchaser amendment helped to promote development of oil and gas resources on public lands, and to protect innocent investors and purchasers.

BONA FIDE
PURCHASER

The Secretary has broad authority to cancel oil and gas leases for violations of the MLA and regulations thereunder, and for administrative errors committed before a lease was issued. However, the Secretary's authority is limited by the bona fide purchaser amendment. The bona fide purchaser protection does not extend to leases that are legal nullities (void), e.g., lands not subject to leasing by statute at the time of lease issuance. Also, the bona fide purchaser protection does not extend to post-lease infractions or violations because they are handled under the regulatory cancellation procedures of 43 CFR 3108.3. The bona fide purchaser protection does extend to voidable leases, e.g., the lease is issued for the lands available for leasing but is not issued to the first-qualified applicant, or the lease is issued in violation of established procedures (e.g., National Environmental Policy Act procedures, etc.). (See Clayton W. Williams, Jr., Exxon Corp., 103 IBLA 192 (1988).)

The bona fide purchaser protection applies only to a purchaser of a lease, interest in a lease, or an option to acquire an existing lease, but does not apply to an assignee of a lease offer since a lease does not yet exist. Also, if a lease has expired or terminated for failure to timely pay annual rental, the absence of a lease at the time of an assignment or transfer of operating rights deprives the transferee from any benefit of bona fide purchaser protection. Similarly, if lease rights were assigned or transferred prior to the lease anniversary date and the lease subsequently terminated by operation of law for nonpayment of the annual rental, bona fide purchaser protection does not exist. Actions by the assignor, such as lease relinquishment, do not afford the assignee bona fide purchaser protection.

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KeywordsB. Determining Bona Fide Purchaser

A bona fide purchaser must have acquired the interest in good faith, for valuable consideration, and without notice of a violation of Department of the Interior regulations. The protection of a bona fide purchaser of an oil and gas lease applies only where consideration has been paid before notice of cancellation has been received by the lessor and has become part of the BLM records. (See Bernard Kosik, 70 IBLA 373 (1983).) The consideration must be actually paid. A commitment to pay is not enough. (See Robert L. True (d/b/a/ Comanche Enterprises, Petroleum Research Corp., et al., Satellite 8303116, 101 IBLA 320 (1988).)

BONA FIDE
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DETERMINATION

The assignees of Federal oil and gas leases who seek to qualify as bona fide purchasers are deemed to have constructive notice of all of the BLM records pertaining to the lease at the time of the assignment. For example, if a noncompetitive oil and gas lease had been erroneously issued, effective December 1, 1986, in response to a junior offer filed June 4, 1986, and it was later determined that the lands were subject to a senior offer filed October 31, 1985, that was not recorded to the records until February 26, 1987, and the lessee of the junior filing enters into an assignment on June 8, 1987, the assignee is not a bona fide purchaser entitled to bona fide purchaser protection because the assignment was executed after the records had indicated the existence of senior offer. Therefore, the junior lease can be cancelled in this case. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent person on inquiry that, if followed with reasonable diligence, would lead to a discovery of defects in the title or equitable rights of others affecting the lease.

BONA FIDE
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QUALIFICATIONS

A remote purchaser, i.e. one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as the latter, even where the remote purchaser is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued. (See Ervin Staacke, et al., 62 IBLA 278 (1982).) Note, however, that for remote purchaser protection, the remote purchaser must purchase the lease from a valid bona fide purchaser of the lease. (See Robert L. True (d/b/a Comanche Enterprises) Petroleum Research Corp., et al., Satellite 8303116, 101 IBLA 320 (1988).)

REMOTE
PURCHASER

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Keywords

When a lease cancellation is being considered for a lease that has been assigned, the SO Adjudication needs to ascertain whether the possibility exists that the assignee has bona fide purchaser status. In such a case, the decision issued to initiate lease cancellation is to provide the party the opportunity to present evidence that it acquired and holds the lease interest as a bona fide purchaser, and any opposing party is to be given the opportunity to indicate any evidence to the contrary (see York Associates, 58 IBLA 25 (1981)).

BONA FIDE
PURCHASER STATUS
EVIDENCE REQUEST

For any lease interest holders that are undergoing investigation for probable violations of the MLA, the regulations, or the provisions of the lease, the affected case files are to be documented with a Notice to Prospective Assignees regarding the investigation. The date the case file is noted is considered the date that constructive notice was given that the leases were subject to cancellation. (See Richard W. Eckels, 65 IBLA 76 (1982).) If an assignment is executed after the date that constructive notice is given, the assignee is not considered a bona fide purchaser. See Illustration 50 for a decision denying an assignment because the bona fide purchaser status could not be recognized.

CONSTRUCTIVE
NOTICE IN
CASE FILE

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